BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
National Republican Senatorial Committee and James L. Hagen, as treasurer	)	SENSITIVE
	)	MUR 2314
	)	
Jim Santini for Senate and J. Glen Sanford, as treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On March 25, 1991, the General Counsel sent a probable cause brief to counsel for the National Republican Senatorial Committee ("NRSC"). After several requests for extensions of time and other delays in this matter, counsel for the NRSC submitted a response brief on August 16, 1991. On October 9, 1991, the General Counsel sent a probable cause brief to the Jim Santini for Senate committee with a copy to the candidate, James Santini. The treasurer of the committee responded on October 23, 1991. The candidate filed a response on October 30, 1991. This report covers the issues in this matter with respect to all respondents.

II. ANALYSIS

A. NRSC Arguments

The General Counsel's Brief, signed March 22, 1991, is incorporated by reference into this report. The NRSC has raised several issues in its response brief.

1. Renewed Request for Postponement

The NRSC has renewed its request that further proceedings in MUR 2314 be "temporarily" postponed until resolution of the appeal arising out of MUR 2282 which the NRSC has filed. There is,

however, no guarantee that the decision by the Court of Appeals will resolve the issues in the present matter. Although MUR 2282 and MUR 2314 both address the NRSC and the 1985-86 election cycle, there are factual circumstances in MUR 2314 raising issues of "direction or control" of earmarked contributions which were not addressed in MUR 2282. MUR 2282 dealt with only one of the several NRSC's 1986 solicitation operations cited in MUR 2314, namely the Direct-To Auto program undertaken in September.[1]

The NRSC's brief in the appeal was filed on January 24, 1992, and the Commission's brief is due February 24, 1992. Oral argument has been set for April 23, 1992. If that schedule is adhered to, a decision is not likely until summer at the earliest. If the decision is adverse to the NRSC, it will have 90 days in which to decide whether to petition the U.S. Supreme Court for certiorari, and there will probably be no decision on that petition until next October.

Further postponement of this matter will not necessarily result in more efficient proceedings as the NRSC contends, and going forward at this time will not be unfair to the NRSC. We note that the decision before the Commission in the present matter is whether there is probable cause to believe a violation has occurred. The FECA requires at least a 90-day period

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1. Because the Santini committee was not a respondent in MUR 2282, its involvement as a recipient of contributions solicited through the September Direct-To Auto operation is included in the present matter. On the other hand, because the NRSC's role in that same operation was the focus of MUR 2282, violations of the Act by the NRSC in connection with the September Direct-To Auto program are not here at issue.

in which attempts at conciliation are made. If such attempts are not successful, the next decision is whether to file suit in district court. Thus, the NRSC will have further opportunities to present its case before any ultimate decision is rendered, especially if this present matter proceeds to district court.

Finally, although the NRSC points to past delays in the processing of this matter, such prior delays do not warrant further delay at this point.

2. Success of Solicitations

Counsel has interpreted phrasing in the General Counsel's brief regarding the extent of the NRSC solicitation programs as claiming that the NRSC violated the Act because its earmarking program was "widescale," an argument which counsel views as only showing that the NRSC was successful and effective. The passage which counsel quotes was not, however, intended by this Office to make the scope of an earmarking activity a factor in determining its legality. Rather, the point of the passage was that the Commission's regulation regarding direction and control and dual attribution was intended to preclude the use of the earmarking provision to circumvent the contribution limitations. That would be this Office's interpretation whether the amount was a few hundred dollars or many thousands of dollars.

3. Advisory Opinion 1975-10 as Precedent

The General Counsel's brief cites Advisory Opinion 1975-10 in its discussion of one of the NRSC's 1986 operations, namely Direct To. Counsel has challenged this citation, first

by questioning the validity or precedential value of the opinion because it was based on former 18 U.S.C. § 608(b)(6) which was repealed in 1976. Counsel also notes in this respect that at the time Advisory Opinion 1975-10 was issued there was no regulatory scheme setting forth the direction or control standard which the opinion construed.

Counsel also attempts to distinguish Advisory Opinion 1975-10 on its facts. Counsel describes the opinion as addressing the attempt to have "residual funds" in a committee's account earmarked to individual candidates. Counsel contends that such action would be forbidden today because of the 10-day transmittal provisions of 11 C.F.R. §§ 102.8(a) and (c), which were not in effect at the time the opinion was issued. Counsel notes that, with regard to the NRSC solicitations, "no funds were deposited in an account for more than 10 days prior to being earmarked and transferred to the Santini committee." In this manner, counsel argues that the NRSC "did not accept the funds pending an earmarking instruction."

Counsel further contends that the General Counsel's brief attempts to make the language in Advisory Opinion 1975-10 a standard for direction or control by focusing on the "active solicitation" reference in the opinion, and contends that the Commission rejected such a standard in its 1989 rulemaking proceeding. Finally, counsel argues that the NRSC's role was solely that of "a persuasive communicator and an effective organizer," and that the contributor made the exclusive choice of the recipient candidate.

The legislative history of 18 U.S.C. § 608(b)(6) contained the statement that, if a conduit exercised direct or indirect control over the making of a contribution, the contribution would be attributable to both the contributor and the conduit for limitation purposes. See H.R. Rep. No. 93-1239, 93rd Cong. 2d Sess. 16 (1974). This statement in the legislative history is the basis for current 11 C.F.R. § 110.6(d). See 54 Fed. Reg. 34098, 34107 (1989). Furthermore, when the statutory earmarking provision was re-enacted in 1976 as current 2 U.S.C. § 441a(a)(8), it was described in the Conference Report as "identical to existing law." See H.R. Rep. No. 94-1057, 94th Cong. 2d Sess. 56 (1976). Clearly, Advisory Opinion 1975-10 construed the Act in light of its legislative history. Because former 18 U.S.C. § 608(6)(b) was re-enacted without change into its current form at 2 U.S.C. § 441a(a)(8), and its legislative history was still deemed valid by the Commission as the basis for the current regulation at 11 C.F.R. § 110.6(d), Advisory Opinion 1975-10 remains instructive, if not controlling, as to certain factual circumstances under which an earmarked contribution would be attributable to both the contributor and the conduit for limitation purposes.

Counsel has also mischaracterized this Office's use of Advisory Opinion 1975-10. The crucial facts in Advisory Opinion 1975-10 that are relevant in particular to the NRSC's Direct-To operation in 1986 are that the political committee involved in the opinion had already solicited funds as contributions to itself, had deposited them into an account under its control,

and then later went back to the contributor to urge the contributor to earmark the funds to a recipient candidate. Aside from the difference in time in which the funds remained in the political committee's control, this Office sees little factual distinction between the circumstances addressed in Advisory Opinion 1975-10 and the circumstances of the Direct-To earmarking operation and of parts of other operations at issue in this matter. Therefore, we are not persuaded by counsel's efforts to reject or distinguish the relevance of Advisory Opinion 1975-10.

As for the Commission's alleged "rejection" of an "active solicitation" standard during its 1989 revision of the conduit regulations, it must be noted that the Commission in fact chose not to adopt any "regulatory language that clearly delineates situations where direction or control exists from those in which the conduit has not exercised direction or control." 54 Fed. Reg. 34098, 34108 (1989). The Commission therefore did not reject active solicitation as an indicia.

The NRSC in all of the solicitation operations here at issue went beyond "persuasive communica[tion]" and "effective organiz[ation]." It was the catalyst and manager, directing and controlling each step of the solicitation, receipt and distribution process. For each of its operations the NRSC decided which candidates were most in need of assistance at a particular time, and presented those specific candidates to the potential contributors contacted. In the instances where this Office recommends proceeding to a probable cause determination,

the contributors made out checks to the NRSC, and it was the NRSC which received the contributions, placed them in its account, and then sent the funds on to the candidates.

4. Criteria for Direction or Control

Counsel contends that the General Counsel's brief "gropes through the Commission's previous opinions in a vain search for an identifiable standard" for direction or control. Counsel attributes this "lack of success" to the Commission's failure to give meaning to the phrase "direction or control," resulting in a "laundry list" of "irrelevant indicia inconsistently applied by General Counsel in a fruitless attempt to show a violation of this non-standard."

Counsel argues that the brief combs through previous opinions to focus on whether checks were written directly to the candidate or to the NRSC, notes that the latter procedure is recognized and permitted by the Act and regulations, and dismisses it as a relevant indicia of direction or control. Counsel then claims that the brief's focus upon timing is also irrelevant because, as presented in the brief, the argument relates to timing of the appeal or solicitation, and because any intermediary soliciting earmarked contributions controls the timing of an appeal. Counsel refers to the regulation which requires that earmarked contributions received by an intermediary to be forwarded within 10 days as limiting the intermediary's discretion as to the timing of the distribution of an earmarked contribution. Counsel further argues that whether the earmarking is made before or after the intermediary

receives the contribution is also not evidence of direction or control because the contributor in either case exercised a choice. Counsel also challenges as an indicator of direction or control any emphasis upon methods of solicitation such as the use of telephone and other personal contacts.

This Office disagrees with counsel's reading of our brief and with counsel's attempts to divide the various indicia of direction or control into separate parts and then to dismiss them seriatim by arguing that each indicia has not previously been found to have constituted direction or control. Rather, this Office continues to employ a totality of the circumstances approach to determining whether there is direction or control. In our view, all of the circumstances of an earmarking program must be considered together as part of one overall program or operation in assessing whether a conduit or intermediary exercised direction or control over the making of a contribution. That is the import of the District Court's opinion in FEC v. NRSC, 761 F.Supp. 813 (D.D.C. 1991).[2] (See discussion below.)

With regard to the issue of the payee on a contributor check, counsel cites as support for its irrelevance the General Counsel's Brief in MUR 1028. It is significant, however, that

2. We also note that during its recent rulemaking proceeding, the Commission chose not to adopt a specific definition or criteria for direction or control but, instead, stated that this factual determination would be made on a case by case basis. Without a specific definition or set of criteria and under a case by case approach, the totality of the circumstances approach is the only route left.

that matter involved contributor checks which were then passed along to the candidates benefited; any checks made payable to the conduit were sent back to the respective contributors. While it is correct that the Act permits deposits of contributions into a conduit's account and later distribution to candidates, such deposits, in conjunction with, for example, (1) after-receipt earmarking and (2) the selection by the conduit of particular candidates as those for whom contributions will be solicited, may well, when considered together, constitute "some direction or control" as found in FEC v. NRSC.

The timing of solicitations can be crucial in providing infusions of funds for particular candidates when most needed, and again is one of several indicia of possible direction or control. The use of telephone contacts is also not nearly as irrelevant as counsel contends, especially where what contributors were told before earmarking a contribution cannot be determined. Certainly, the potential for directing or controlling any earmarking obtained is far greater with such oral contacts. And this Office strongly disagrees with counsel's contention that the NRSC had not initially "accepted" certain funds when they were, upon receipt, placed into a special NRSC account until either earmarked to specific candidates or transferred into the NRSC's main account. In our view what is crucial to the issue of direction or control is that the NRSC solicited these particular funds for itself or for unspecified candidates, placed them into an account it

controlled, and then contacted the contributor in an attempt to have the contribution earmarked.

5. Consistency with Prior Commission Determinations

Counsel argues that each of the NRSC solicitation programs here at issue was consistent with previous Commission decisions finding no direction or control pursuant to 11 C.F.R. § 110.6(d). This Office is unpersuaded by counsel's arguments because the precedents he cites are factually distinguishable from the circumstances addressed in the present matter.

Counsel cites Advisory Opinion 1980-46 and Advisory Opinion 1987-29. AO 1980-46 addressed a situation in which contributor checks were to go directly to the candidates being supported, not through the conduit as did the NRSC programs. Counsel's citation of AO 1987-29 is also misplaced because the Commission in that opinion was concerned with a situation in which the potential contributors to be contacted by a membership organization were to make their contributions directly to the candidates to be benefited, not through a conduit. The Commission expressly did not reach a decision in the latter opinion as to whether the organization's original plan to accept and transmit the contributions would constitute direction or control.

Counsel cites AO 1980-46 as support for the argument that as long as an individual contributor voluntarily chooses to earmark a contribution to a candidate, the choice is the contributor's, not the conduit's, and that as long as there is contributor choice, there can be no direction or control.

Because any earmarking program will necessarily require that the individual contributor take some steps to earmark a contribution, it is unclear under what circumstances, if any, counsel would acknowledge the conduit had exercised direction or control over the making of an earmarked contribution. The thrust of counsel's position is to read Section 110.6(d) out of the regulations or treat it as surplusage without any real effect or application.

6. FEC v. NRSC

Counsel posits that the district court ruling in FEC v. NRSC, 761 F.Supp. 813 (D.D.C. 1991) ("NRSC"), is not binding on the Commission and that the circumstances addressed in that opinion, arising from MUR 2282, are factually distinguishable from the circumstances in this matter. We would agree with counsel that, as far as the NRSC's involvement in MUR 2314 is concerned, MUR 2282 and MUR 2314 are factually distinguishable. We also note that the Commission has said that the question of direction or control must be resolved on a case by case basis. Therefore, the factual differences between MUR 2282 and MUR 2314 as regards the NRSC are the reasons why MUR 2314 is being pursued. Those factual differences do not, however, make the district court's analysis regarding direction or control inapplicable.

We further note that our brief refers to the procedural history of that case and makes it clear that the particular program addressed in MUR 2282 is not included in MUR 2314 with regard to the NRSC. We do, however, refer in the brief to the

district court opinion in Common Cause v. FEC, 729 F.Supp. 148 (D.D.C. 1990) ("Common Cause"), which also addressed the NRSC's Direct To Auto program, and set out the reasons why the court concluded that the portion of that program at issue in MUR 2282 constituted direction or control. We also state that the decision in Common Cause may be used as precedent on the issue of direction or control unless overruled by NRSC. Our brief was issued on March 25, 1991, and NRSC was decided on April 9, 1991. Thus, at the time our brief was written and issued, a decision in NRSC had not been rendered. NRSC did not overrule Common Cause.

In NRSC the court found that through the Direct To Auto program at issue in MUR 2282 the NRSC had exercised "some 'direction or control' over the choice of recipients of funds." That particular program involved direct mail solicitations consisting of 24 versions of a letter citing four different unnamed Senatorial campaigns in four named states which were assertedly in special need of assistance. A total of twelve states were cited in different versions of the letter. Each letter requested a specific amount, depending upon the donative histories of those on the various lists used, and contributors were asked to make their checks payable to the NRSC. No candidates or their committees were involved in planning the program, and none authorized the letters to be sent.

The court found that "some direction or control" resulted from the following cited facts:

> The NRSC, not the candidates, chose how many letters would mention each candidate and which candidates would be mentioned in which letters;

> The NRSC, not the candidates, selected the mailing lists for each version of the letters mailed;
>
> The potential donors were given only one choice - "to write checks to the NRSC for equal distribution to four preselected candidates;
>
> The letters requested precise amounts - there was no suggestion that they could contribute other amounts;
>
> Because the solicitation letters cited potential beneficiaries by state, the identities of the candidates were "obscured." . . . "[T]he fundraisers hoped to raise funds for candidates for whom donors might have little specific enthusiasm by blurring the specific funding requests in a general pro-party message.";
>
> The NRSC deposited the checks received into its own account; and,
>
> Its legal obligation to pass on the checks to the candidate committees was not clear in the solicitation letters.

The court stated, "At the very least, the letters created a default mechanism that established 'direction or control' over the identities of candidates who would benefit from unencumbered responses and the formula for division of contributions." 761 F.Supp. at 818-819. The court did not state that all of the above facts were necessary to a finding of direction or control in any particular situation.

7. Application of NRSC and Commission Precedents

The five 1986 NRSC solicitation operations here at issue as regards the NRSC are Direct To, the second Direct-To Auto, Majority '86, Trust, and the Miscellaneous Conduiting program. All of these differed from the Direct To Auto program in MUR 2282 and in NRSC by naming the specific candidates to be

benefited. However, these operations in certain other ways were organized and implemented like the program addressed in MUR 2282.

The NRSC's 1986 Direct To operation, as explained above, involved telephone requests that contributions already made to the NRSC be earmarked to particular candidates, with each person being given at least three prioritized suggestions of recipients. This program did cite potential recipients by name; however, the scripts contained no specific language informing the contributor that earmarking was not required or that he or she could earmark the contribution to yet another candidate. Thus, as in NRSC, it was the conduit which decided which candidates were in need of assistance at what times, and which donors should be asked to direct their contributions to those particular candidates. Any choice exercised by the donor was within parameters set by the NRSC. Further, the funds involved were already in the NRSC's account. Thus, the Direct To operation met the criteria for direction or control established by NRSC as well as those discussed in Advisory Opinion 1975-10.

The second version of the Direct To Auto operation involved the sending of solicitation letters, each of which targeted only one named Senate candidate's campaign selected by the NRSC. No alternative candidates or open-ended possibilities were provided. Specific amounts were requested, with the amounts varying from letter to letter. Contributors were told to make their checks payable to the NRSC and the contributions were placed in an NRSC account and then disbursed by that committee.

Thus, this program met certain criteria for direction or control set out in NRSC.

The Majority '86 operation involved both mail solicitations and telephone and personal contacts asking for $5,000 contributions - $1,000 for the NRSC and $4,000 for candidates. In return contributors became members of Majority '86. The Majority '86 telephone and personal contact campaign included requests for earmarking of Inner Circle contributions to the NRSC already received.

As stated in the General Counsel's brief, of the $75,575 received by the Santini campaign from the Majority '86 program, $32,575 was transmitted by means of NRSC checks. An undetermined portion of this $32,575 involved after-receipt earmarking, as a result of telephone or personal requests, of originally unearmarked contributions to the NRSC. This latter procedure would place the contributions passed on to the Santini campaign in the same category as the those raised via the Direct To program discussed above. Thus, there is a firm basis for a finding of probable cause to believe that the NRSC directed or controlled the $32,575 sent on to the Santini committee by means of NRSC checks.

The Trust operation involved the solicitation by telephone and at meetings of individuals who had contributed $10,000 to the NRSC. Of the contributions sent to the Santini campaign under this program, $5,600 was forwarded by means of NRSC checks and apparently represented funds which had been received by the NRSC prior to earmarking, thus indicating NRSC initiatives in

obtaining earmarking approval after receipt. Therefore, there was NRSC direction or control of this $5,600.

Finally, the contributions received and disbursed to the Santini campaign pursuant to the Miscellaneous Conduiting program apparently included both solicited and unsolicited contributions which were sent on to candidate committees by means of both contributor checks and NRSC checks. The latter category totaled $28,295.54. It appears that any solicitations were made by direct personal contacts or by telephone, not by mail. The content of these solicitations is not known; however, the active participation by the NRSC involved in those oral solicitation efforts which did occur, plus the use of NRSC checks to send on $28,295.54 in earmarked contributions, provides the basis, pursuant to NRSC, for finding NRSC direction or control as to this amount of conduited contributions.

The NRSC contributions to the Santini for Senate Committee resulting from the above analysis include the following:

Direct To	-	$71,627.33
Direct To Auto	-	72,055.00
Majority '86	-	32,575.00
Trust	-	5,600.00
Misc. Conduiting	-	28,295.54
		$210,152.87

8. Solicitation Costs

Counsel also challenges the brief's analysis regarding the allocation of solicitation costs relating to the earmarking operations at issue in this matter. Counsel correctly refers to the regulation at 11 C.F.R. § 106.1(a) that requires allocation "in proportion to . . . the benefit reasonably expected to be

derived." Counsel places emphasis on the term "expected" and attacks the brief for allegedly using an after-the-fact approach.

We have not charged the NRSC with liability because they did not have the gift of hindsight before the fact. We have merely illustrated the inadequacy of the NRSC's allocation method, an inadequacy that should have been apparent at the outset of the operations involved in this matter. There was a wide divergence between what the NRSC actually charged, based solely on the number of successful contributions, and the actual costs to the NRSC of the solicitations as a whole. This wide divergence, made more questionable by the NRSC's considerable prior experience with solicitation programs, demonstrates, in our view, that the NRSC's method was not reasonable from the beginning. We are also unpersuaded by the NRSC's use of two independent accounting firms to arrive at its $3 per transferred contribution allocation.

Outside advice notwithstanding, under the NRSC's method of allocating solicitation costs, the aggregate charged to all candidates who benefited from a particular earmarking program covered only a fraction of the costs of soliciting those contributions. The remainder was underwritten and paid for by the NRSC.[3] If the candidates themselves had undertaken a joint fundraising program, they would have had to share the total costs of the solicitations. The NRSC could not have paid a

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3. To the extent that the Preztunik affidavit claims that the cost of unsuccessful solicitations was included in the $3 flat fee, then we are questioning its credibility. Our analysis is based on the hard figures the NRSC provided in response to our interrogatories and affidavits.

major portion of them unless (1) it was a participant in a joint fundraising effort and the portion of the costs it paid reflected the portion of the receipts it garnered, or (2) the difference between costs and reimbursement was treated as a contribution to the candidates or as coordinated party expenditures on behalf of them. Although this Office recognizes the legal and factual differences between an earmarking program and a joint fundraising one, the earmarking and allocation provisions should not be construed in a manner to permit a political committee to fund solicitation costs in the manner employed by the NRSC.

In the cases of the Direct To and the second Direct To Auto operations, the NRSC has provided figures for overall solicitation costs, thus permitting a realistic estimate of the Santini Committee's share of those costs and of the amount of unreimbursed costs and the resulting contribution by the NRSC. In the case of the Majority '86 program, this Office has used the ratio of the amount of total contributions received from a solicitation to the portion transferred to the Santini Committee because these are the only hard figures the NRSC has been able to provide to us regarding this particular operation and thus are the only ones with which any assessment of solicitation costs can be made.

As stated in the General Counsel's brief, there is no evidence that the NRSC incurred significant expenses with regard to the Trust operation and thus no allocation of such expenses is needed. In the case of Miscellaneous Conduiting a specific

estimate of an appropriate allocation of solicitation costs has not been possible because of the presence of an unknown amount of unsolicited contributions among those transferred to the Santini Committee and the absence of any information about specific solicitations. It appears that a significant portion of such solicitations were made in person or by telephone rather than by mail.

this Office recommends that the Commission take no further action with regard to them.

The above analysis has resulted in the following figures for unreimbursed solicitation costs related to the Santini committee:

Direct To	-	$12,716.00
Direct To Auto	-	42,404.76
Majority '86	-	16,665.00
		$71,785.76

9. Conclusion

This Office recommends that the Commission find probable cause to believe that the NRSC violated 2 U.S.C. § 434(b) and 11 C.F.R. § 110.6(d)(2) by failing to report a total of $210,152.87 in earmarked contributions as made by both the NRSC and the original contributors. This Office also recommends that the Commission find probable cause to believe that the NRSC violated 2 U.S.C. § 441a(h) by making excessive contributions to the Santini Committee totaling $210,152.87 in the form of

earmarked contributions over which the NRSC exerted direction or control, and by making excessive contributions in the form of unreimbursed solicitation costs totaling approximately $71,786.

B. Santini Committee

The General Counsel's Brief, signed October 8, 1991, is incorporated by reference into this report.

The treasurer of the committee in a separate letter (Attachment 1) points out that he is a small accountant practitioner and served on the campaign as a friend of the family. He states that he "was not involved in the handling of campaign contributions." He adds that his primary responsibility was the reconciliation of bank accounts. He states that he knows "nothing of the information contained in the General Counsel's Brief." He asks that the charges against him be dismissed.

The candidate states that he does not believe the Commission should find probable cause to believe but instead should "not take any action on this stagnant proceeding." (Attachement 2). Santini first notes that he did not receive a copy of the brief, although the letter indicates a "cc" to him. Staff prepared an envelope addressed to Santini at the address in our records on Vermont Ave in the District. He apparently had moved to an address in Alexandria, but his mail was not being forwarded to that address.

He also alleges "some element of deceit at work here." He states that, during Commission staff inquiries in 1987-88, on 10 to 15 separate occasions he was repeatedly assured by

staff that the committee had been removed as a respondent and was proceeding only with respect to the NRSC and the Nevada Republican Party. He claims the action against the Nevada Republican Party was resolved by conciliation. He notes that the "Direct to" program of the NRSC remains the major legal issue before the Commission and the U.S. Court of Appeals. He adds:

> Now I am confronted with this belated effort to catch up Santini for Senate '86 in the wake of the real legal contest. We are an irrelevant and stale sideshow to the main event.

First, we note that Mr. Santini's references to the Nevada Republican Party appear to confuse this matter with another enforcement matter. The Nevada Republican Party has never been a party to MUR 2314; it was, however, a respondent in MUR 2270, in which the Santini Committee was also originally named a respondent. The Commission found no reason to believe the Santini Committee had violated the Act and closed the file with respect to that committee in MUR 2270. Santini is evidently confusing the two matters. Staff assigned to MUR 2314 during 1987-88 has no recollection of making any representations to Santini that his committee had been removed as a respondent in MUR 2314.

Santini also states that his committee has been defunct for more than four years and that, after holding the committee records for the required three years, they have been destroyed. He adds that our legal dispute about the earmarking program is with the NRSC, not the Santini Committee.

The General Counsel recommends that the Commission take no further action against Jim Santini for Senate and J. Glen Sanford, as treasurer, and close the file with respect to them. The earmarking programs at issue in this matter were those of the NRSC; that committee should bear the responsibility for any violations arising from those programs. The Santini Committee is defunct and without records. The events in question occurred several years ago. The Commission has not chosen to pursue other candidate committees who received earmarked contributions through the NRSC in the 1986 election cycle; in particular, no candidate committees were respondents in MUR 2282. Therefore, the General Counsel concludes that the Commission should exercise its prosecutorial discretion and dismiss the Santini Committee from this matter.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

Attached is a proposed conciliation agreement with the NRSC

IV. RECOMMENDATIONS

1. Find probable cause to believe that the National Republican Senatorial Committee and James L. Hagen, as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 110.6(d)(2) by failing to report

as contributions from the NRSC $71,627.33 in earmarked contributions transmitted to Jim Santini for Senate through the 1986 Direct-To operation.

2. Find probable cause to believe that the National Republican Senatorial Committee and James L. Hagen, as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 110.6(d)(2) by failing to report as contributions from the NRSC $72,055.00 in earmarked contributions transmitted to Jim Santini for Senate through the second version of the 1986 Direct-To Auto operation.

3. Find probable cause to believe that the National Republican Senatorial Committee and James L. Hagen, as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 110.6(d)(2) by failing to report as contributions from the NRSC $32,575 in earmarked contributions transmitted to Jim Santini for Senate by means of NRSC checks through the 1986 Majority '86 operation.

4. Find probable cause to believe that the National Republican Senatorial Committee and James L. Hagen, as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 110.6(d)(2) by failing to report as contributions from the NRSC $5,600 in earmarked contributions transmitted to Jim Santini for Senate by means of NRSC checks through the 1986 Trust operation.

5. Find probable cause to believe that the National Republican Senatorial Committee and James L. Hagen, as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 110.6(d)(2) by failing to report as contributions from the NRSC $28,295.54 in earmarked contributions transmitted to Jim Santini for Senate by means of NRSC checks through the 1986 Miscellaneous Conduiting operation.

6. Find probable cause to believe that the National Republican Senatorial Committee and James L. Hagen, as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 106.1 by failing to report as contributions to Jim Santini for Senate $71,785.76 in unreimbursed costs related to solicitations for the 1986 Direct To, Direct To Auto, and Majority '86 operations.

7. Take no further action against the National Republican Senatorial Committee and James L. Hagen, as treasurer, with regard to any violations of 2 U.S.C. § 434(b) and 11 C.F.R. § 106.1 as a result of failures to report as contributions to Jim

Santini for Senate any unreimbursed costs related to solicitations for the Trust and Miscellaneous Conduiting operations.

9. Find probable cause to believe that the National Republican Senatorial Committee and James L. Hagen, as treasurer, violated 2 U.S.C. § 441a(h).

10. Take no further action against Jim Santini for Senate and J. Glen Sanford, as treasurer, and close the file as to these respondents.

11. Approve the attached conciliation agreement and the appropriate letter.

2/13/92
Date

Lawrence M. Noble
General Counsel

Attachments

1. Letter from J. Glen Sanford
2. Letter from James D. Santini
3. Conciliation Agreement

Staff assigned: Anne A. Weissenborn

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: **LAWRENCE M. NOBLE**
GENERAL COUNSEL

FROM: **MARJORIE W. EMMONS** /DONNA ROACH
COMMISSION SECRETARY

DATE: FEBRUARY 25, 1992

SUBJECT: MUR 2314 - GENERAL COUNSEL'S REPORT
DATED FEBRUARY 13, 1992

The above-captioned document was circulated to the Commission on TUESDAY, FEBRUARY 18, 1992 at 11:00 A.M.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	
Commissioner Elliott	XXX
Commissioner McDonald	XXX
Commissioner McGarry	
Commissioner Potter	
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda for TUESDAY, MARCH 10, 1992.

Please notify us who will represent your Division before the Commission on this matter.